

AGN. NO. _____

MOTION BY SUPERVISOR DON KNABE

June 28, 2011

The County, along with the City of Whittier and County Sanitation District No. 2, is a member of the Puente Hills Landfill Native Habitat Preservation Authority, pursuant to a joint exercise of powers agreement entered into in accordance with Section 6500, et seq., of the Government Code. The Authority, which was created in 1994 as a requirement of the Conditional Use and Oak Tree Permit for the continued operation of the Puente Hills Landfill, is charged with acquiring, restoring, and/or maintaining additional open space lands in the La Puente/Whittier Hills area, and is funded from tipping fees collected from the Landfill operations.

The Authority is recommending to its member agencies certain amendments to the joint exercise of powers agreement. The proposed revisions are primarily administrative and are intended to allow the Authority to more effectively and efficiently carry out its intended purposes. The Amended Joint Exercise of Powers Agreement must be approved by all member agencies prior to becoming effective.

(MORE)

MOTION

MOLINA	_____
RIDLEY-THOMAS	_____
YAROSLAVSKY	_____
KNABE	_____
ANTONOVICH	_____

-2-

I, THEREFORE, MOVE THAT THE BOARD OF SUPERVISORS approve and authorize the Mayor to execute the attached Amended Joint Exercise of Powers Agreement for the Puente Hills Habitat Preservation Authority and direct the Executive Office to return six executed originals to the Executive Director of the Authority.

DS:azr

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**Amended Joint Exercise of Powers Agreement
Puente Hills Habitat
Preservation Authority
*Endowment provided by the Puente Hills Landfill***

April 28, 2011

This **Joint Exercise of Powers Agreement** is made and entered into by and between **County Sanitation District No. 2 of Los Angeles County (District)**, on behalf of itself and on behalf of **County Sanitation District Nos. 1, 3, 5, 8, 15, 16, 17, 18, 19, 21, 22, 23, 29 and the South Bay Cities Sanitation District of Los Angeles County, the County of Los Angeles (County), and the City of Whittier (Whittier).**

WHEREAS, County is a subdivision of the State of California and is the governmental agency with local land use jurisdiction over the Puente Hills Landfill. In addition, County has the power to acquire, own, manage, control, and dispose of property and has an interest in preserving wildlife corridors, open space, and parkland;

WHEREAS, Whittier is a charter city in proximity to the area depicted in Exhibit A and has the power to acquire, own, manage, control, and dispose of property and has an interest in preserving wildlife corridors, open space, and parkland;

WHEREAS, District is a special district organized and existing pursuant to the County Sanitation District Act, California Health & Safety Code Sections 4700, *et seq.*, and has the power to acquire, own, control, manage, and dispose of property necessary or convenient for the construction, maintenance, and operation of a refuse transfer and disposal system or facilities;

WHEREAS, pursuant to the Sanitation Districts Solid Waste Management System Agreement, dated April 8, 1970, as amended (System Agreement), the District is empowered to maintain the various sites, facilities, operations and equipment that comprise the Sanitation Districts Solid Waste Management System, including the Puente Hills Landfill;

WHEREAS, the District proposed a project known as the Puente Hills Waste Management Facilities in order to provide continued sanitary landfill operation for the purpose of solid waste disposal; and implementation of a Materials Recovery and Rail Loading Facility, which provides a mechanism to divert waste from landfill disposal, while also facilitating the implementation of a waste-by-rail system for out-of-county disposal;

WHEREAS, the Final Environmental Impact Report for the Puente Hills Waste Management Facilities was prepared for this project pursuant to the provisions of the California Environmental Quality Act ("CEQA"), and was certified by the District's Board of Directors on November 25, 1992;

WHEREAS, on July 20, 1993, the Los Angeles County Board of Supervisors approved Conditional Use and Oak Tree Permit 92-250-(4) (Permit) for the continued operation of the Puente Hills Landfill, subject to certain attached conditions;

WHEREAS, among the conditions to which the Permit is subject, is Condition 15, which requires the establishment of a Joint Powers Authority (JPA) consisting of the District, County, and Whittier with participation by a representative of the Hacienda Heights Improvement Association for the purpose of acquiring, restoring, and/or maintaining additional open space lands in the La Puente / Whittier Hills area and which provides that the JPA will be funded by an annual payment by the District of one dollar (\$1.00) per ton of refuse disposed of at the Puente Hills Landfill during the landfill operation under CUP 92-250-(4), commencing with the formation of the JPA;

WHEREAS, on December 18, 2002, the Los Angeles County Regional Planning Commission approved Conditional Use Permit 02-027-(4) extending the operations of the Puente Hills Landfill to 2013 subject to certain conditions;

WHEREAS, among the conditions to which Permit 02-027-(4) is subject, is Condition 24 (e), which requires the District to make an annual payment of \$1.00 per ton of refuse disposed of at the Puente Hills Landfill into a fund established for the purpose of acquiring, restoring, and/or maintaining additional open space lands in the Puente Hills/Whittier Hills areas in the vicinity of District's property pursuant to the joint powers authority established to control the operation of the fund;

WHEREAS, the Parties desire to preserve or create for the benefit of the public a native habitat area in lands acquired under this Agreement.

NOW, THEREFORE, District, County, and Whittier do agree as follows:

SECTION 1 PURPOSE:

1.1 The purpose of this Agreement is to provide for the acquisition, restoration, and/or maintenance of open space lands in the La Puente Hills / Whittier Hills areas in the vicinity of the District's property. Additionally, the Authority will give special consideration to land acquisitions, habitat restoration, trailhead construction, and recreational and/or educational amenities on open space lands within and for the benefit of the community of Hacienda Heights.

1.2 Acquisitions may be by purchase, gift, dedication, devise, transfer, eminent domain, or exchange and may extend to any interest in real or personal property necessary to carry out the purposes of this Agreement.

1.3 An additional purpose of this Agreement is to provide for the utilization of any type of appropriate method of financing of capital acquisitions and improvements, and the maintenance, servicing, and operation thereof, to the greatest extent permitted pursuant to any applicable provision of the Streets and Highways Code of the State of California, or any other applicable statutes, and consistent with the Provisions of Proposition 218 adopted by the voters in 1996.

1.4 The Authority is a governmental entity separate and apart from its member entities. Each director is authorized to act independently from his or her appointing authority.

SECTION 2 DEFINITIONS:

The following definitions govern the construction of this Agreement:

“La Puente / Whittier Hills” shall be as delineated within Exhibit A;

“Party” or “Parties” means individually or collectively the signatories to this agreement;

“Refuse disposed” shall mean refuse disposed of at the Puente Hills Landfill which is subject to the payment of the basic disposal fee as set by the District;

“Restoration” means improvement of a degraded habitat to a value or function approaching or attaining that which existed naturally.

SECTION 3 CREATION OF AUTHORITY:

3.1 Pursuant to the provisions of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, Sections 6500 *et seq.* (“the Act”) relating to the joint exercise of powers common to public agencies, the Parties hereby establish a public entity separate and apart from the signatories, the Puente Hills Habitat Preservation Authority, a joint powers authority (the “Authority”). The debts, liabilities and obligations of the Authority shall not constitute the debts, liabilities and obligations of the

Parties to this Agreement. District, County, and Whittier each possesses the powers referred to below.

SECTION 4 TERM:

4.1 This Agreement in its original form became effective on February 15, 1994, and as amended, will become effective on the date that it is fully executed by all Parties and will terminate by mutual agreement of the Parties.

SECTION 5 ORGANIZATION:

5.1 BOARD OF DIRECTORS

Authority shall be governed by a Board of Directors (Board) composed of four directors.

- (a) One director shall be appointed by the Board of Directors of District and shall at the time of appointment be a director or employee of District.
- (b) One director shall be appointed by the County, and shall be an employee of the County of Los Angeles.
- (c) One director shall be appointed by the Supervisor representing the supervisorial district which geographically includes the Puente Hills Landfill and shall be a member of the Hacienda Heights Improvement Association throughout his or her term as director.

- (d) One director shall be appointed by the City Council of Whittier and shall, at the time of appointment, be a member of the City Council, or shall be his or her Whittier City Council approved designee.

The City Council of Whittier, County, the appointing Supervisor and District Board of Directors may appoint alternate directors to act as directors of the Board during a director's absence, if the director is absent for three or more consecutive regular meetings, or is unable or refuses to act. The term of each director and alternate shall be at the will of the appointing body or Supervisor. Each alternate shall possess the qualifications required of the director for whom he or she acts as alternate.

The Board shall make all discretionary decisions not delegated to the officers by resolution or Board direction.

Directors shall receive no compensation but shall be entitled to be reimbursed for all expenses approved by the Board as reasonably incurred in fulfilling their responsibilities.

Vacancies on the Board shall be filled by the Party or supervisor that originally appointed the vacating Director.

5.2 OFFICERS:

The Board shall elect a Chair and Vice Chair from among its directors at its first meeting. Thereafter, at the first meeting held in each succeeding calendar year the Board shall elect or re-elect its Chair and Vice Chair. In the event that the Chair or Vice Chair ceases to be a director of the Board, the resulting vacancy shall be filled at the next meeting of the Board held after such vacancy occurs. In the absence or inability of the Chair to act, the Vice Chair shall act as Chair. The Chair, or in his or her absence the Vice Chair, shall preside at and conduct all meetings of the Board.

The Board shall appoint either the Treasurer of the County of Los Angeles or a certified public accountant, holding a current California license to practice issued by the California Board of Accountancy, to be the Treasurer of Authority. The appointed Treasurer is designated as the Authority's depository to have custody of all funds of Authority from whatever source, subject to the provisions of any bond indenture or resolution. The Treasurer shall comply with the provisions of Government Code Sections 6505 and 6505.5 as those sections may be amended or as similar laws may from time to time provide.

The Board shall appoint as Authority's Controller an employee of the Authority, the Auditor/Controller of the County of Los Angeles, or a third party individual or company with qualifications to act as Controller. The Controller shall be strictly accountable for all funds and shall report all receipts and disbursements. The Controller

shall establish and maintain such funds and accounts as may be required by good accounting practice. The books and records of Authority in the hands of the Controller shall be open to inspection at all reasonable times by representatives of the Parties. The Controller within one hundred eighty (180) days after the close of each fiscal year shall give a complete written report of all financial activities for such fiscal year to the Board and shall make such further reports and cause such audits of the accounts and records of the Authority to be made as are required by law.

Remuneration for the Treasurer and Controller, if same are public entities or employees of public entities, shall be determined by the Board and shall be sufficient to cover the costs, both direct and indirect, incurred by such officers. Payment of private contractor(s) for either or both positions shall be determined pursuant to the Authority's contracting procedures. The Board may from time to time change the designated Treasurer or Controller to any person who is authorized by the Act to occupy such office.

Authority may request, at Authority's expense, the City Attorney, District Counsel, or County Counsel to attend the meetings of the Board and advise the Board in connection with any business relating to the affairs of the Authority, with fee rates to be approved by the Board.

The Board may appoint or contract for the services of an Executive Director and such other staff as is reasonably necessary to conduct the affairs of the Authority. The Executive Director and members of the staff shall not be a director or member of the

governing body of any Member. The Executive Director shall have overall managerial responsibility for overseeing the activities of the Authority, which may be performed by the Authority's forces or under contract by others.

The Treasurer, Controller, and Executive Director shall have charge of, handle and have access to the property of the Authority, and each shall be liable on a fiduciary bond, or endorsement thereof, in an amount not less than \$100,000. The cost of the bond shall be paid by the Authority as required by Government Code Section 6505.1.

5.3 MEETINGS OF THE BOARD.

5.3.1 Regular Meetings.

The Board shall provide for its regular meetings and shall hold at least two regular meetings each year. The dates and the hour and place at which any regular meeting will be held shall be fixed by resolution and a copy of such resolution shall be delivered to the Parties. The place of the regular meetings shall be within the County of Los Angeles.

5.3.2 Ralph M. Brown Act.

All meetings of the Board, including without limitation, regular, adjourned regular, and special meetings, shall be called, noticed, held, and conducted in accordance with the provisions of the Ralph M. Brown Act (Government Code Sections 54950 *et*

seq.) as such act may be amended or as similar acts regulating the conduct of meetings of public agencies may from time to time provide.

5.3.3 Minutes.

An administrative secretary to the Board shall cause minutes of regular, adjourned regular, and special meetings to be kept, and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director.

5.3.4 Quorum.

Three (3) directors present at a Board meeting shall constitute a quorum for the transaction of business, except that a lesser number may adjourn for lack of a quorum.

5.3.5 Board Actions.

All actions by the Board shall require approval of a minimum of three of the directors.

5.4 POWERS:

Authority shall have the powers common to Whittier, County and District including the power to acquire, exercise the power of eminent domain, dispose of, own,

control, and manage property necessary for supporting the activities of Authority.

Authority is hereby authorized to do all acts which are necessary or desirable to carry out the purposes of the Agreement and to exercise the common powers of the agencies set forth above, including, but not limited to, the following:

- a. To make and enter into contracts;
- b. To employ agents and employees, and contract for professional services;
To the extent that employees of any Party render services for Authority, the charges for those services shall not exceed the direct and indirect costs of providing the services. Indirect costs shall be a direct percentage of direct costs and the percentage shall be identical for each of the Parties. The percentage shall be as mutually agreed by the Parties.
- c. To acquire, contract for, construct, manage, maintain, or operate any building, works, improvements, or facilities necessary to the operation of the Authority;
- d. To acquire by purchase, gift, lease, or otherwise; to hold or dispose of property; and to receive grants – provided that any real property acquired by purchase by Authority shall be located within the La Puente / Whittier Hills as defined in Exhibit A;

- e. To incur debts, liabilities, or obligations that do not constitute the debts, liabilities or obligations of the Parties to this Agreement;
- f. To issue bonds, notes, warrants, or other evidences of indebtedness to finance project costs.
- g. To sue and be sued in its own name;
- h. To apply for and execute appropriate grants or contracts of financial assistance;
- i. To also manage open space and permanently-protected parklands that are not owned by the Authority, but which serve the purpose of this Agreement.

These powers shall be subject only to such restrictions upon the manner of exercising such powers as are imposed upon District in the exercise of similar powers.

5.5 Function of Authority

The Authority shall manage the fund established pursuant to Section 6. Authority shall evaluate property within the La Puente / Whittier Hills and determine appropriate

property for preservation or restoration; acquire such property; determine appropriate level of restoration, if any; establish a maintenance fund, if required; initiate restoration if required; and if deemed appropriate, during the term of this Agreement, to transfer or dedicate such property and maintenance funds to an appropriate public agency under terms deemed by the Board to be consistent with provisions of this Agreement.

Habitat restoration projects shall emphasize to the greatest extent possible the use of native plants typically found in the area being restored.

SECTION 6 FUNDING OF AUTHORITY:

Pursuant to Permit 02-027-(4) Condition 24 (e) District has been making, and will continue to make, an annual payment of \$1.00 per ton of refuse disposed of at the Puente Hills Landfill into a fund established for the purpose of acquiring, restoring, and/or maintaining additional open space lands in the La Puente / Whittier Hills areas in the vicinity of District's property pursuant to the joint powers authority established to control the operation of the fund. The District's annual payments will continue so long as disposal operations continue under the Permit.

Annual payments will be received on March 1st of each year for the previous year's refuse placement. Each payment to the Authority will be placed in interest bearing accounts, non-interest bearing accounts if required, or investments as authorized by the currently adopted investment policy.

The Authority may also solicit and receive funding from sources other than the District payments. These funds may be used for any lawful purpose of the Authority.

SECTION 7 INSURANCE AND INDEMNIFICATION:

Authority shall secure and keep in effect during the term of this Agreement general liability insurance in such amounts as the Board determines appropriate, except that the limits of such insurance must be at least \$3,000,000 per occurrence. The Authority shall furnish certificates of insurance to the Parties within thirty (30) days of the effective date of this Agreement. The policy or policies of insurance shall name each of the Parties as additional insureds, and shall provide for a thirty (30) day advance written notice by the insurance carrier to the Parties in the event of cancellation, reduction of coverage, or renewal.

The Authority shall indemnify, defend, and hold harmless the Parties, their officers, agents, and employees from and against all claims, demands, or liabilities arising out of or encountered in connection with this Agreement or the activities conducted under this Agreement.

SECTION 8 DISTRIBUTION OF ASSETS ON TERMINATION:

Upon termination of this Agreement all assets shall be transferred to an appropriate public agency deemed by the Board to be consistent with the provisions of this Agreement.

SECTION 9 WITHDRAWAL OF PARTIES

Any Party may withdraw as a party to this Agreement by giving written notice of its intent to withdraw to the Executive Director not less than three months prior to the effective date of its withdrawal. The Agreement shall remain in effect so long as two or more local governments are parties to this Agreement.

IN WITNESS WHEREOF, each of the Parties has executed this Agreement on the date and year as set forth below.

ATTEST:

COUNTY SANITATION DISTRICT NO. 2
OF LOS ANGELES COUNTY

By _____
Secretary

By _____
Chairperson

Dated _____

APPROVED AS TO FORM
LEWIS BRISBOIS BISGAARD & SMITH LLP

By _____
District Counsel

ATTEST:

CITY OF WHITTIER

By _____

By _____

Dated _____

APPROVED AS TO FORM

By _____

SACHI A. HAMAI
Executive Officer—Clerk of the
Board of Supervisors

COUNTY OF LOS ANGELES

By *Cn Tel*
Deputy

By *Mike Antonovich*
Mayor, County of Los Angeles
Dated *June 28, 2011*

APPROVED AS TO FORM

ANDREA SHERIDAN ORDIN
County Counsel

By *[Signature]*
Deputy



I hereby certify that pursuant to
Section 25103 of the Government Code,
delivery of this document has been made.

SACHI A. HAMAI
Executive Officer
Clerk of the Board of Supervisors

By *Cn Tel*
Deputy

ADOPTED
BOARD OF SUPERVISORS

13 JUN 28 2011

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

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